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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

Nos. 518 AND 536

THE ATLANTIC REFINING COMPANY, *et al.*,
Petitioners,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, *et al.*,
Respondents.

TENNESSEE GAS TRANSMISSION COMPANY,
Petitioner,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, *et al.*,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR RESPONDENTS LONG ISLAND LIGHTING COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY

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December 2, 1958

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Long Island Lighting Company and Public Service Electric and Gas Company, respondents in each of the above-captioned proceedings, urge this Court to grant the petitions for certiorari (except with respect to Question 4 presented in No. 518 and Question 3 presented in No. 536) for the following reasons:

1. Said respondents agree that the views herein of the Court of Appeals for the Third Circuit reported *sub nom. PSC* v. *FPC*, 257 F. 2d 717, as to the responsibilities and powers of the Federal Power Commission with respect to initial rates of natural gas producers conflict with those of the Court of Appeals for the District of Columbia in *Oklahoma Natural Gas Co.* v. *FPC*, 257 F. 2d 634, *cert. granted*, November 10, 1958. Neither decision provides a reliable guide to the Commission for the proper disposition of the large number of cases involving initial rate issues now before it. Resolution of the conflict by this Court for the guidance of the Commission is desirable.

2. The upward spiral of producer rates for newly-committed gas, resulting from the great expansion of the industry in a seller's market, makes the question of initial rates of great importance in the administration of the Natural Gas Act. The Commission has the power to reduce initial rates, once established, to just and reasonable levels only by Section 5 proceedings which are lengthy (not a single one involving producers of natural gas having been completed to date) and which can result only in a prospective rate order.

But the Commission has effectual alternatives. It can forestall unwarranted prices by issuing certificates of public convenience and necessity under Section 7 conditioned on rate reductions. *Signal Oil & Gas Co.* v. *FPC*, 238 F. 2d 771 (3d Cir. 1956), *cert. denied*, 353 U. S. 923 (1957). In fact, in the instant proceedings the Commission went further; it required a reduction in the initial rate, but provided that after one day the producers would be allowed to file the higher rate, the contract amount, which would be permitted to go into effect under bond without any suspension. Thus the producers would be allowed to keep the full contract amount if found to be "just and reasonable" under Section 4, but consumers

would not be obliged to pay that amount if the producers could not justify it. Then, without further hearings, because of the producers' concerted threat to withhold the gas, the Commission abandoned this approach which is so eminently fair to buyer and seller as well as to the consuming public.

The great importance to the gas industry and to the public of the initial rates at which gas is now being marketed, coupled with the failure of the Commission to insist on some technique such as the earlier order herein which would protect the public while the reasonableness of the rate is being examined, makes it desirable for the Court to consider the present case as well as the *Oklahoma Natural Gas* case and to settle the crucial initial rate problem. However, these respondents believe that neither Question 4 presented in the petition in No. 518 nor Question 3 presented in the petition in No. 536 warrant the attention of this Court.

Respectfully submitted,

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